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The Kleindienst Nomination (IV)

According to dispatches from the Queen's birthday party at the British Embassy last week, Mr. Richard Kleindienst, the acting Attorney General, has it "on the word of Senator Mansfield," the Democratic leader in the Senate, that the votes are in hand for confirmation of his appointment to be Attorney General. The machinery, it seems, is set on automatic; the fix is in. There will be a vigorous challenge from in intense and undeniably partisan minority, and that will be the end of it, barring something unforseen, because that is the way the movers and shakers wanted it to be.

In short, the System is alive and well in Washington and when you look back on one of the longest struggles in memory over the appointment of a member of the President's cabinet, it figured. Even those more responsible Republicans who had real doubts about the matter never had much stomach for opposing their President. As for Hugh Scott, the Senate Minority Leader, for him the inquiry into Mr. Kleindienst's fitness was a "dry creek" before he started traveling up it. Chairman Eastland of the Judiciary Committee was also of fixed mind from the start. And Senator Mansfield wanted to close off the Committee hearings before they had barely begun to get to the bottom of any of the central questions surrounding Mr. Kleindienst's qualification to become the chief law enforcement officer of the land.

So Mr. Kleindienst will presumably become our next Attorney General and only time will tell how big a victory this will turn out to be for him, or for the President, because the issues at stake in the Kleindienst nomination go well beyond his fitness for the job of Attorney General or even the larger question of a President's entitlement to have anybody he wants in his Cabinet who is not clearly guilty of impropriety or of conflict of interest or of a crime. Also at issue in the minds of many people, we would surmise, is the larger question of whether in this instance—as in a good many others—the System any longer works in a manner that makes it worthy of public respect.

We have set forth at some length those portions of Mr. Kleindienst's record in the number two spot at the Justice Department which would seem to bear most heavily on his qualifications to be elevated to be number one. And while we find this record first of all to be damaging in the extreme, the second thing to be said about it is that it is woefully incomplete — in large part because that is the way that Mr. Kleindienst and the Administration wanted it to be. By evasion, by loose invocation of executive privilege, by convenient and unconvincing lapses of memory, by plain dissembling, by refusal to produce relevant records as well as relevant witnesses—by all these means the Administration did little to help the Senate in its inquiry and a great deal to hinder it. It is well known that the President instructed his congressional liaison men in blunt terms to take, as their first objective, not the defense of Mr. Kleindienst but the earliest possible ending of the hearings—to get the ITT story off page one, as the President is said to have put it at one point in somewhat more forceful language. That is the message his agents carried to Republican senators, and while it is all very well to talk about his right to his own man at Justice, a President sending that sort of message, and with that as his general approach to the prerogatives of the Senate, forfeits some part of his right to have practically anybody he wants in his Cabinet.

If the record is incomplete in part because Mr. Nixon engaged in a systematic refusal to cooperate with the Senate Judiciary Committee, it is also a

tangle of loose ends because the Committee itself refused to exercise its own rights to call important witnesses and to pursue significant leads and to dig into aspects of the case which might, if followed too diligently, have compromised a particular Senator, or the Republican Party, or that collection of institutions—embracing both parties and both branches of the government, and the business community, as well—which has come to be known as the System. There is, then, something to be said for the recommendation of Senator Burdick, endorsed by others, that the nomination of Mr. Kleindienst be recommitted to the Judiciary committee for further hearings. If we thought that a renewal of the inquiry would take us any closer to the truth we would unreservedly favor it. But the the record does not encourage hope in this course; a vote to recommit, in fact, would be a vote to defeat the nomination. And the honest way to do this, in our view, is to vote it up or down, in straightforward fashion. For the record, while incomplete, is also, as we have noted, more complete than Mr. Kleindienst and the Administration wanted it to be.

So we would urge the Senate to invoke Mr. Kleindienst's own philosophy in these matters as he himself applied it—or misapplied it—in a case involving "highly improper" conduct by the U.S. Attorney for the Southern District of California. In that case, the conduct in question was *unknown* to the public and Mr. Kleindienst decided to keep it that way on the grounds that disclosure might undermine public confidence in law enforcement. Well, Mr. Kleindienst's handling of that case, and of the case of a bribe offer which he took an inordinate amount of time to recognize, and of the ITT affair, is *not* unknown to the public. What is more, the pattern of conduct on his part strikes us as no less improper in its totality than the conduct of the California District Attorney which he elected to conceal—and no less potentially damaging to public confidence in law enforcement.

In short, a heavy cloud hangs over Mr. Kleindienst. If there is no disposition among his supporters in the Senate to dispel it, and if the Administration is prepared to stand on Mr. Kleindienst's record as it is now known, then the question no longer turns on the President's right to have his own man in the job of Attorney General. The question, narrowly, is public confidence in the enforcement of law under Mr. Kleindienst and, broadly, the confidence of the people in govermental processes already under heavy challenge, already suspect on grounds of lack of responsiveness to the public interest. This is what is at the heart of the Kleindienst nomination—the maintenance of public faith in our processes of government—and that in large part is why we believe that on the record now available Mr. Kleindienst should not be confirmed.